HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 618 OF 2004

PETITIONER Mahila Swa-Sahayata Samuh Gorhihari, through- its secretary, Smt. Naan Bai, wife of Phulchand, aged about 35 years, R/o. Village, Gram Panchayat & Post-Gorhihari, Block Sarangarh, Dist. Raigarh (C.G.)

Vs.

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Fisheries, Govt. of Chhattisgarh, D.K. Bhavan, Raipur (C.G.)
2. The Gram Panchayat, Village – Gorhihari, Through its Secretary, village- Gorhihari, Block Sarangarh, Dist. Raigarh (C.G.)
3. The Collector (Fisheries), District Raigarh (C.G.)
4. Shri Doodh Nath Patel S/o. Not known, Sarpanch of Village Panchayat, R/o. Village-Gorhihari, Block Sarangarh, Dist. Raigarh (C.G.)
5. Shri Rohit Marar S/o. Mohan aged about 35 years, Gram-Patel of Village-Gorhihari, R/o. Village-Gorhihari, Block Sarangarh, Dist. Raigarh (C.G.)

Present: Mr. M.P.S. Bhatia, learned counsel for the petitioner.

Mr. Yashwant Singh, learned counsel for the State of Chhattisgarh.

Mr. P. Diwakar, learned Sr. Advocate with Mr. P.R. Patankar, learned counsel for respondent 2,4 & 5.

ORAL ORDER

(Passed on 12th January, 2006)

The Collector (Fisheries), the third respondent herein, by his order dated 09/07/2002 granted fishing right to the petitioner herein for a period of ten years commencing from 09/07/2002. It is the case

of the petitioner that in pursuance of the above grant, it has sown fish seeds in the tank known as Bade Talab situate at Khasra No.459 measuring 4.100 hectares at village Gorhihari in Block Sarangarh district Raigarh and paid the lease rent in advance for the period ending June 2005 with respondent No.2. When the matter stood thus, the third respondent by the impugned order dated 16/02/2004 cancelled the lease on the ground that the petitioner – Society itself has represented to the Gram Panchayat to cancel the lease. The petitioner – Society being aggrieved by the said action has preferred this writ petition under Article 226 of the Constitution seeking intervention of the Court.

(2) This Court having entertained the writ petition by its order dated 27/2/2004 stayed the operation of the impugned order and that interim order has been in operation till date. At the time of hearing, it was brought to my notice by the learned counsel for the parties that though this Court stayed the operation of the impugned order, fishing is completely stopped till date.

(3) Although the impugned order is granted on the purported application of the petitioner – Society itself requesting the authorities to cancel the lease, the petitioner in great detail has set out in the writ petition the circumstances leading to filing of such application and coercion and undue influences exercised by the people of Gorhihari village, particularly, respondents 4 and 5 (respondent No.4 – is the former Sarpanch of village Panchayat, whereas respondent No.5 is the Gram Patel of Gorhihari village). The relevant pleading in that

regard is contained in paras 5.4 and 5.5 of the writ petition which reads as follows:

> " That, the respondent No.4 is the present Sarpanch and the respondent No.5 is the Patel of Village-Gorhihari. These persons/officers are creating problems for the petitioner group as they want to allot the said tank for fishing to the people of their own political & social group. That, on 23.07.02 these persons led a march to the office of S.D.O. Sarangarh for cancellation of the lease-deed in favour of the petitioner and started creating law and order problem. That, these people used to promote theft of fish-stock belonging to the petitioner and proceedings u/s 107,116(3) of Cr.P.C. against some people closed to them viz. – Mahesh Ram, Kheek Ram, Ganesh @ Herhga, Rameshwar and Geeta Ram by P.S. sarangarh on report dated 10.07.03 and against Laxman Kenwat u/S 109/(2) of Cr.P.C. on report dated 23.08.03. That, the respondents Nos. 4 & 5 also imposed social boycott of the members of the petitioner group and the people of village-Gorhihari were directed not to interact with them against which a written complaint dated 05.08.02, was lodged by the Naan Bai, the secretary of the petitioner group. A copy of the report dated 05.08.02 is being annexed herewith as Annexure P-5.
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> That, the respondents put all kind of pressure over the lady members as well as their family members to foce them to surrender their lease over Bade Talab. That, ultimately on 06.11.02 succumbing to the pressure put by the respondents No.4 & 5, and on the initiation taken by the S.D.O. Sarangarh, the petitioner agreed to sign an agreement. A copy of the agreement dated 06.11.02 is being annexed herewith as Annexure P-6. But the respondents No.4 & 5 did not follow the conditions of the same and started promoting theft of fish stock in the tank.

That, when the petitioner applied for lease for 10 years of two other tanks viz. – Marahi Talab and Amha Talab vide applications dated 06.02.03,22.03.2003,25.03.2003 and 25.05.2003, the respondent No.2 granted only Marahi Talab to the petitioner that too for a period of 5 years only, which was clear cut violation of the spirit in which the agreement dated 06.11.02 was signed. Therefore, on 30.10.03 the petitioner filed an application dated 29.10.03 before the various authorities of the State Govt. for not cancelling their lease-deed. Copies of the applications dated 06.02.03, 22.03.2003,25.03.2003 and 25.05.2003, are jointly being annexed herewith as Annexure P-7 and a copy of the application dated 29.10.03 is being annexed herewith as Annexure P-8."

(4) Although at the time of hearing, the learned Govt. Advocate appearing for the State authorities and the learned counsel appearing for respondents 2, 4 and 5 would attempt to supplement the reasons for the impugned action by contending that the original grant of lease itself was bad in law, because, the grant was made without the consent of the second respondent and that the subject tank as per the wishes of the people of Gorhihari village is required to be kept apart for the general uses of the people of the village, I am not inclined to appreciate that contention urged before the Court at the time of final hearing. The Supreme Court in the case of **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and another**[1] in para 8 of the judgment observed thus:

"8. The second equally relevant matter is that when statutory functionary makes an order – on certain

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1. AIR 1978 SC 851

grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds letter brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18)

> 'Public orders publicly mad, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are mend to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'
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> Orders are not like old wine becoming better as they grow older."

Therefore, the validity of the impugned action has to be decided with reference to the ground stated in the impugned order. The petitioner is a group of women drawn from the Backward and Suppressed classes of the society. The petitioner – Society is formed exclusively of the women who belong to the scheduled caste weaker section of the Society and all of them, it is claimed, are below the poverty line. Such a Society formed for the purpose of undertaking fish husbandry and having persuaded the District Collector to grant the lease, it is highly incredible to abruptly and without any good reason could think of seeking cancellation of the lease, to their peril. The reason stated in

the impugned order to cancel the lease does not stand to the scrutiny of commonsense and test of rationality. The circumstances set out in the pleading of the petitioner which led to the petitioner – Society agreeing for cancellation was, it appears under the influences brought on them by respondents 4 and 5 and their cronies in the village. The Court would have refused the relief in a matter like this, if the State authorities which had passed the impugned order were to state any substantive reason or ground to cancel the lease to sub-serve public interest. In the circumstance of the case, I am inclined to believe the version of the petitioner.

(5) In the result, the writ petition is allowed and the impugned order is quashed. A direction shall issue to the respondents to permit the petitioner – Society to carry out their fishing right secured under the grant order dated 09/07/2002 for a term of ten years, however, subject to the petitioner – Society performing its duties and obligations in terms of the grant order. No costs.

Sd/-
Chief Justice
Judge

Brajesh